

HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.1322 of 2006

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Between:

Papalal

.....Appellant.

And

Government of Andhra Pradesh,
represented by its Principal Secretary,
Revenue (Endt.II) Department,
Secretariat, Hyderabad and another.

.....
Respondents.

:: J U D G M E N T ::

Counsel for the appellant : Sri S.Ramachandra Rao,
Senior Advocate,
assisted by Sri K.R.Prabhakar.

Counsel for respondent No.1 : Government Pleader for
Endowments.

Counsel for respondent No.2 : Sri P.Yadgir Rao.

5th January, 2007

Per G.S. SINGHVI, C.J.

This is an appeal for setting aside order dated 25-9-2006 passed by the learned Single Judge in Writ Petition No.27236 of 2005, whereby he declined to quash Memo No.19119/Endts.II(1)/2005 dated 1-12-2005 issued by the State Government refusing to review its earlier decision to dismiss the revision filed by the appellant in the matter of his eviction from the property belonging to Sri Sitaram Maharaj Samsthan, Sitaram Bagh, Hyderabad (for short, 'the Samsthan').

The appellant claims to have taken 4,000 square yards of land belonging to the Samsthan on oral lease during 1946-47. He also claims to have executed rental deed dated 10-8-1956 in respect of one mulgi bearing No. (Nil) situated at Sitaram Bagh Temple, which he is said to have taken from Lakshminivas Gariwal at a monthly rent of Rs.10/-. On 27-1-1957, he claims to have executed another rental deed for land of unspecified measurement taken from Lakshminivas Ganeriwal at a monthly rent of Rs.20/- for establishment of storage of wood. The hereditary trustee (respondent No.2) of the Samsthan filed an application under Section 75 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (for short, 'the 1966 Act'), which was registered as O.A.No.70 of 1984. In response to the notice issued by Deputy Commissioner, Endowments Department, Hyderabad (hereinafter described as 'the Deputy Commissioner'), the appellant appeared and filed reply to contest the application filed by respondent No.2. He questioned the very locus of respondent No.2 and pleaded that being a tenant, action cannot be taken against him under Section 75 of the 1966 Act and that without terminating his

tenancy in accordance with the provisions of the Transfer of Property Act, 1882, an order of eviction cannot be passed against him. After considering the entire matter, the Deputy Commissioner, by a well reasoned detailed order dated 13-4-1992, allowed the application of respondent No.2 and ordered eviction of the appellant. He held that respondent No.2 has the locus standi to file application under Section 75 of the 1966 Act; that the proceedings are not vitiated due to violation of Section 106 of the Transfer of Property Act, 1882 and that the appellant is an encroacher within the meaning of Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the 1987 Act'). Reference to the 1987 Act came to be made in the order of the Deputy Commissioner because, during the pendency of the application filed by respondent No.2, the 1966 Act was repealed by the 1987 Act.

The appellant challenged the order of eviction by filing revision under Section 92 of the 1987 Act. The same was registered as Revision Petition No.63 of 1992 and was dismissed by Regional Joint Commissioner, MZ-III, Hyderabad vide his order dated 7-1-1997. Further revision filed by the appellant was dismissed by the State Government. The decision of the State Government was conveyed to the appellant vide Memo No.36033/E&DTS.II(1)/2003, dated 29-3-2005.

It is borne out from the record that during the pendency of O.A.No.70 of 1984, respondent No.2 filed an application before the Special Court constituted under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short, 'the Special Court'), which was registered as L.G.C.No.78 of 1990. The Special Court dismissed the case by holding that the appellant is not a land grabber within the meaning of Section 2 (d) of the Andhra Pradesh Land Grabbing

(Prohibition) Act, 1982.

The appellant challenged orders dated 13-4-1992 and 7-1-1997 passed by the Deputy Commissioner and the Regional Joint Commissioner respectively and the decision of the State Government dismissing the second revision filed by him by filing a petition under Article 226 of the Constitution of India, which was registered as Writ Petition No.9228 of 2005. He not only questioned the locus of respondent No.2 to file application under Section 75 of the 1966 Act but also pleaded that in view of the finding recorded by the Special Court that he is not an encroacher, the order of eviction passed by the Deputy Commissioner by treating him an encroacher under Section 83 of the 1987 Act cannot be sustained. The learned Single Judge, after noticing the rival pleadings and contentions, dismissed the writ petition. The appellant's plea that the order of eviction passed by the Deputy Commissioner is liable to be nullified in view of the judgment of the Special Court in L.G.C.No.78 of 1990 was rejected by the learned Single Judge by recording the following observations:

"It is to be noted that while the proceedings under Section 75 of the Act 17 of 1968 were pending before the Deputy Commissioner of Endowments, the second respondent also initiated proceedings under Section 8(1) of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, seeking a declaration that the petitioner is a land grabber in respect of 2,500 square yards of land situated in Survey No.4 of Mallepalli village. The said petition being L.G.C.No.78 of 1990 was dismissed by the Special Court under land grabbing prohibition Act, Hyderabad by order dated 29-04-1994 holding that the applicant has failed to establish that writ petitioner is not a tenant in respect of the scheduled land and has encroached into the land between 1986 and 1989 as alleged and therefore, he is a land grabber. Admittedly, the said order dated 29-04-1994 in L.G.C.No.78 of 1990 has become final. On the basis of the said order, the petitioner contends that the

finding recorded by the fourth respondent as confirmed by the Revisional Authority as well as the first respondent that the petitioner is an encroacher and therefore liable to be evicted is not sustainable. It is contended that L.G.C.No.78 of 1990 was filed by the second respondent and the same was ended in dismissal. Thus the findings recorded therein are binding on the second respondent and therefore, the order of eviction passed under the provisions of the Act 30 of 1987 cannot be acted upon. The learned counsel for the petitioner submits that though the said objection was raised before the first respondent-Revisional Authority, the same was not considered in a correct perspective.

It is to be noted that Chapter 11 of the Act 30 of 1987 deals in detail with the encroachment of the land or buildings belonging to the charitable or religious institutions, endowments and the eviction of encroachers. Explanation to 83 (1) of the Act 30 of 1987 defines the expression 'encroacher' as any person who unauthorisedly occupy any land or building or space and dug to enable any person who is in occupation of the land or building without approval of the competent authority sanctioning lease or mortgage. In the case on hand, the specific case of the second respondent was that two mulgies were given to the petitioner on 27-11-1957 on a monthly rent of Rs.20/- for firewood shop and another room was given on a monthly rent of Rs.10/- in the month of August, 1956. An area of 157 square yards was given on rent to him in terms of two rental deeds and that the petitioner has encroached upon 1,833 square yards in the year 1982 and has been in illegal possession since then. It was alleged that in spite of the registered notice dated 27-01-1982, his tenancy to the portion under his illegal possession, refused to receive the same. He also evaded to receive the subsequent notices. The Deputy Commissioner of Endowments, having considered the version of the writ petitioner and having appreciated the evidence adduced both oral and documentary, recorded a finding of fact that the writ petitioner fell in arrears of rent and he has taken only one mulgi for rental purpose apart from the open land for establishment of storage of wood. It was

categorically held that the area of 2000 square yards was only leased out to the writ petitioner and the remaining area which is in his occupation is illegal possession. It was held that the writ petitioner was in occupation of more area than that was leased out to him and therefore, he is an encroacher as contemplated under Section 83(1) of the Act 30 of 1987. It is not in dispute with the said finding recorded by the Deputy Commissioner of Endowments was confirmed by the Regional Joint Commissioner as well as the first respondent-Government. It is true that the second respondent has also initiated simultaneous proceedings under the provisions of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, Hyderabad on the basis of the very same facts alleging that the writ petitioner grabbed the land to an extent of 2,500 square yards. The Special Court under the Andhra Pradesh Land Grabbing Prohibition Act has taken into consideration the fact that the eviction proceedings initiated by the second respondent under Section 75 Endowments Act 17 of 1966 were already pending before the Deputy Commissioner of Endowments in which the writ petitioner took a stand that he was the tenant in respect of the entire premises. However, having considered the two rental deeds dated 10-08-1956 and 27-01-1957 which was marked as Exs.A-2 and A-4, the Special Court observed that the said rental deeds were silent as to the extent of the open land and in the absence of any evidence to clinchingly establish as to the extent of the open land let out to him, the allegation that the respondent had encroached into the scheduled property cannot be accepted. Accordingly, it was also observed that since the applicant failed to take any steps for getting the encroachment removed till 1990 when the application was filed, the relief as prayed for cannot be granted and accordingly dismissed the application.

At the outset it is to be noted that the proceedings under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 and the Act 30 of 1987 are entirely distinct.

Under Section 83 of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987, the

expressing encroacher shall mean any person who unauthorisedly occupy any land, or building or space without the approval of the competent authority sanctioning lease or mortgage. Since a finding of fact has been recorded that the petitioner has unauthorisedly occupied the land in question, undoubtedly he falls within the definition of encroacher under the Explanation to Section 83 (1) of the Act. In the circumstances, the proceedings initiated for eviction under the Endowments Act are maintainable and the order passed thereunder has become final. Merely because the Institution has also initiated proceedings under the A.P. Land Grabbing (Prohibition) Act, 1982, which was held against the Institution, it cannot be held that it operates as *res judicata*. As a matter of fact, the order of the Special Court under the A.P. Land Grabbing (Prohibition) Act, at Hyderabad, is superfluous and the 1st respondent has rightly ignored the same while dismissing the Revision Petition.”

After dismissal of Writ Petition No.9228 of 2005, the appellant filed a petition under Section 94 of the 1987 Act for review of order dated 29-3-2005 passed by the State Government. While doing so, he did not disclose the fact that the writ petition filed by him questioning the legality of the order of eviction passed by the Deputy Commissioner, the revisional order passed by the Regional Joint Commissioner and the decision of the State Government, which was communicated to him vide Memo dated 29-3-2005, had been dismissed by the learned Single Judge by a detailed order. Therefore, after taking cognizance of the contumacious conduct of the appellant, the State Government dismissed the review petition. This was communicated to him vide Memo dated 1-12-2005.

The appellant challenged the last mentioned decision of the State Government in Writ Petition No.27236 of 2005. The learned Single Judge noted that the appellant never had a formal duly

executed lease with the Samsthan and held that he was rightly declared as encroacher by the Deputy Commissioner. The learned Single Judge further held that in view of the dismissal of Writ Petition No.9228 of 2005, the appellant is not entitled to seek review of order dated 29-3-2005 and the State Government did not commit any illegality by refusing to entertain the review petition.

Sri S.Ramachandra Rao, learned Senior Counsel appearing for the appellant strongly relied on the judgment of this Court in **N.Sanyasi Naidu v. M.A.N.Society of Arts and Sciences**^[1] and argued that the Deputy Commissioner committed a serious error by ordering eviction of his client by treating him as encroacher of the land belonging to the Samsthan. Learned Senior Counsel submitted that in view of the unequivocal finding recorded by the Special Court that the appellant is not a land grabber, the contrary finding recorded by the Deputy Commissioner is liable to be ignored and the order of eviction is liable to be quashed. Shri Ramachandra Rao then submitted that after expiry of the term of the lease, the status of the appellant would be that of a tenant holding over and he cannot be evicted by being treated as an encroacher within the meaning of Section 83 of the 1987 Act.

Learned Government Pleader and Shri P.Yadgir Rao, learned counsel for respondent No.2 relied on order dated 16-12-2005 passed in Writ Petition No.9228 of 2005 and argued that in view of dismissal of the writ petition filed by him questioning the legality of the order of eviction passed by the Deputy Commissioner and revisional orders passed by the Regional Joint Commissioner and the State Government respectively, the appellant is not entitled to raise the same issue and indirectly seek review of order dated 16-12-2005. Shri Yadagiri Rao pointed out that the land grabbing case was

decided by the Special Court after more than two years of the passing of the order of eviction by the Deputy Commissioner and argued that the same cannot be made basis for nullifying the eviction of the appellant under Section 83 of the 1987 Act. Learned counsel then argued that the finding recorded by the Special Court that the appellant was not a land grabber cannot affect the legality of the order of eviction passed by the Deputy Commissioner by treating him as encroacher of the land belonging to the Samsthan. He further argued that the learned Single Judge who heard Writ Petition No.27236 of 2005 could not have directly or indirectly reviewed the order passed in Writ Petition No.9228 of 2005, which had become final. Learned counsel relied on the judgment of the Supreme Court in **State of Andhra Pradesh v. Nallamilli Rami Reddi**^[2] and argued that the appellant cannot invoke the provisions of the tenancy laws for protection of his possession.

We have thoughtfully considered the respective submissions and perused the record. In our opinion, the appeal is meritless and is liable to be dismissed. It is neither the pleaded case of the appellant nor the learned Senior Counsel appearing on his behalf argued that order dated

16-12-2005 passed by the learned Single Judge in Writ Petition No.9228 of 2005 was challenged by filing appeal under Clause 15 of the Letters Patent or an appeal under Article 136 of the Constitution and the same has been set aside. Therefore, that order will be deemed to have become final and correctness thereof cannot be questioned directly or indirectly in the subsequent proceedings.

A careful reading of the order passed in Writ Petition No.9228 of 2005 shows that the learned Single Judge specifically considered the plea of the petitioner (appellant herein) that in view of the judgment of

the Special Court in L.G.C.No.78 of 1990, the contrary finding recorded by the Deputy Commissioner was liable to be ignored and the order of his eviction is liable to be quashed. The learned Single Judge negated this plea and held that the finding recorded by the Special Court in L.G.C.No.78 of 1990 that the petitioner (appellant herein) is not a land grabber within the meaning of the 1982 Act, cannot impinge on the finding already recorded by the Deputy Commissioner that he was an encroacher within the meaning of Section 83 of the 1987 Act. Since that order has become final, the second writ petition filed by the appellant i.e., Writ Petition No. 27236 of 2005 was clearly not maintainable insofar as challenge to the order of eviction is concerned and the learned Single Judge did not commit any error by refusing to entertain this plea.

We also agree with the learned Single Judge that the State Government rightly declined to entertain the appellant's prayer for review of the decision contained in memo dated 29-3-2005. In our considered view, the Government could not have ignored order dated 16-12-2005 passed in Writ Petition No. 9228 of 2005 and reviewed its earlier decision.

We may now advert to the judgments on which reliance has been placed by the learned counsel for the parties. In **N. Sanyasi Naidu v. M.A.N. Society of Arts and Science**^[3], a learned Single Judge nullified the order of eviction on the premise that Section 82 of the 1987 Act has been struck down by the Full Bench of this Court in **S. Narayana v. State of A.P.**^[4]. Admittedly, that judgment has been reversed by the Supreme Court in **State of Andhra Pradesh v. Nallamilli Rami Reddi**^[5]. Therefore, the judgment of the learned Single Judge in **N.Sanyasi Naidu's** case (supra), cannot be relied for

nullifying the eviction of the appellant, who has been treated as encroacher of the land belonging to the Samsthan, more so because Writ Petition No. 9228 of 2005 filed by the appellant questioning the order of eviction was dismissed by the learned Single Judge and the order of the learned Single Judge has become final.

In **Jaladi Seetharamamma v. Sri Ramalingeswara Swami Temple**^[6], a learned Single Judge considered the effect of the Supreme Court's verdict in **State of Andhra Pradesh v. Nallamilli Rami Reddi** (supra) and observed:

“A Full Bench of this Court in **S. Narayana v. State of Andhra Pradesh, 1990 (1) ALT 237**, declared that Section 82 of the Endowments Act as violative of Article 14 of the Constitution of India. In view of uncertainty of the validity of section 82 of the Endowments Act in the interregnum, various proceedings before the authorities created under the Tenancy act were continued. The said judgment of this Court has been set aside by the judgment of the Supreme Court in an appeal by the State in **State of Andhra Pradesh v. Nallamilli Rami Reddy, 2001 (7) SCC 708**, upholding the legality and validity of section 82 of the Endowments Act. By virtue of the aforesaid ordinance and the judgment of the Supreme Court referred to above, all the leases between parties in these petitions came to an end on the date of commencement of the Endowments Act and thereafter there is no landlord and tenancy relationship between the institution and the cultivator. A Division Bench of this court in WP No. 28714 of 1998 dated 19.2.2002 also held that the provisions of A. P. (Andhra Area) Tenancy Act, 1956 have no application to the Endowments Act in view of the judgment of the Supreme Court referred supra. Therefore, the proceedings before the authorities under the Tenancy Act are not maintainable and the proceedings initiated either by the institution or by the cultivator are non-est in law.”

In our opinion, the view expressed by the learned Single Judge

in the last mentioned judgment represents correct legal position.

For the reasons mentioned above, we hold that the order impugned in the appeal does not suffer from any legal infirmity warranting interference by the Division Bench and the appeal is liable to be dismissed. Ordered accordingly.

G.S.SINGHVI, C.J.

05th January, 2007

C.V. NAGARJUNA REDDY, J.

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- [\[1\]](#) 1997 (1) ALT 755
 - [\[2\]](#) AIR 2001 SC 2616
 - [\[3\]](#) 1997 (1) ALT 755
 - [\[4\]](#) 1990 (1) ALT 237
 - [\[5\]](#) AIR 2001 SC 3616
 - [\[6\]](#) 2004 (6) ALD 739